



*Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals*

Matthew Zuker, Chairman
James S. DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member
Timothy C. Foley, Associate Member

October 26, 2016

DECISION - BOARD OF APPEALS CASE NO. 18-16

APPLICANT:
Eamonn Lynch

LOCATION OF PROPERTY INVOLVED:

1641 Washington Street and shown on the Assessors Map as Lot No. 53-270, Residence A Zone, Water Resource Protection Overlay District Area 3.

APPLICATION FOR:

A **Special Permit** under M.G.L. Ch. 40A Section 6 and Section 9:4.A of the Zoning By-Laws to the proposed reconstruction and expansion of an existing two-family residence.

Determinations under M.G.L. Ch. 40A Section 6 and Section 9:2G(4) to allow the demolition of and change to the existing structure.

On October 26, 2016 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to making **Determinations** and as to the granting of a **Special Permit** to Eamonn Lynch.

The following members were present and voting:

Matthew Zuker, Chairman
James S. DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member
Timothy C. Foley, Associate Member

A motion was made by Craig W. Hiltz, seconded by James S. DeCelle, on behalf of the applicant, to make a **Determination** pursuant to Section 9:2.G(4) of the Zoning By-Laws to allow the existing dwelling at 1641 Washington Street to be demolished and reconstructed as proposed so that the existing two-family use will not be considered "abandoned."

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The vote was **(5-0-0) in favor** (Zuker, DeCelle, Hiltz, Murphy and Coffey voting), therefore the Board **Determined** the existing dwelling at 1641 Washington Street can be demolished and reconstructed as proposed so that the existing two-family use will not be considered “abandoned” subject to the following conditions:

CONDITIONS:

- 1) The Applicant shall obtain a demolition permit prior to the commencement of work.
- 2) All demolished materials shall be either reused or disposed of in accordance with local, state, and federal laws and regulations.
- 3) As stipulated by the applicant at the public hearing, the new two-family dwelling will be constructed in substantial conformance with the plan entitled “1641 Washington Street Plot Plan of Land in Walpole, MA” with a scale of 1”=30’ and a date of August 1, 2016, said plan being prepared by Merrikin Engineering, LLP, 730 Main Street, Suite 2C, Millis, MA 02054, and with the building elevations which were submitted with the application. The Applicant may construct a smaller structure provided that a new plot plan is provided to the Building Inspector as is normally required and that the smaller house be within the footprint shown on the plan referenced above.
- 4) The appearance of the new structure shall conform to whatever guidance is provided (if any) by the Walpole Historical Commission in order to maintain the historic character of the property.
- 5) The Applicant shall connect the new building to the existing municipal sewer supply and shall comply with all applicable water and sewer connection requirements.
- 6) The Applicant shall obtain the required curb cut permit from the Town Engineer for any change to the existing curb cuts to the property.
- 7) Impervious coverage shall be less than 15 percent unless a Special Permit is obtained in accordance with the Zoning Bylaw.

REASONS FOR DECISION:

Pursuant to Section 9:2.G(4) of the Zoning By-Law (and relevant case law), the applicant seeks an explicit recognition and **Determination** from the Board of their intention to demolish the existing two-family residential structure for the purposes of preparing the site for a relocated and reconstructed residential structure. The Board finds that there is no impediment to the construction of the new structure pending normally permitting through the Building Department and Water and Sewer department. The applicant intends to proceed with this demolition as a continuance of the existing non-conforming residential use of the site. The Board therefore determined that the proposed demolition is NOT evidence of abandonment of the existing two-family use and may proceed in anticipation of the proposed two-family residential structure reconstruction. The Board further finds that the proposed reconstructed two-family structure will not be substantially more detrimental to the neighborhood than the existing two-family structure and use.

A motion was made by Matthew Zuker, seconded by James Decelle, on behalf of the applicant to grant a **Special Permit** under Section 9:4.A of the Zoning By-Laws to allow the proposed reconstruction and expansion of an existing non-conforming two-family residence at 1641 Washington Street.

The vote was **(5-0-0) in favor** (Zuker, DeCelle, Hiltz, Murphy and Coffey voting); therefore the application for a **Special Permit** is hereby **granted, subject to the following conditions:**

CONDITIONS:

1. The Applicant shall obtain a demolition permit prior to the commencement of work.
2. All demolished materials shall be either reused or disposed of in accordance with local, state, and federal laws and regulations.
3. As stipulated by the applicant at the public hearing the new two-family dwelling will be constructed in substantial conformance with the plan entitled “1641 Washington Street Plot Plan of Land in Walpole, MA” with a scale of 1”=30’ and a date of August 1, 2016, said plan being prepared by Merrikin Engineering, LLP, 730 Main Street, Suite 2C, Millis, MA 02054, and with the building elevations, which were submitted with the application. The Applicant may construct a smaller structure provided that a new plot plan is provided to the Building Inspector as is normally required and that the smaller house be within the footprint shown on the plan referenced above.
4. The appearance of the new structure shall conform to whatever guidance is provided (if any) by the Walpole Historical Commission in order to maintain the historic character of the property.
5. The Applicant shall connect the new building to the existing municipal sewer supply and shall comply with all applicable water & sewer connection requirements.
6. The Applicant shall obtain the required curb cut permit from the Town Engineer for any change to the existing curb cuts to the property.
7. Impervious coverage shall be less than 15 percent unless a special permit is obtained in accordance with the Zoning Bylaw.

REASONS FOR DECISION

The Board finds that the applicant was able to meet the requirements of Section 9:4.A of the Zoning By-law in that:

- i. *An existing nonconforming one-family or two-family dwelling which is nonconforming with respect to a minimum yard setback may be enlarged or extended in any other direction in compliance with this Bylaw by the issuance of a building permit as provided in § 3.1. Any other change, extension, or alteration of an existing nonconforming one-family or two-family dwelling may be permitted provided the Board of Appeals grants a special permit including a determination that such enlargement or extension will not increase the nonconforming nature of the structure,*

or that such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

In hearing the application, the Board finds that the existing use of the structure is non-conforming because two-family dwellings are not allowed by right in the Residence A zoning district and further that the existing structure is non-conforming with respect to front yard setback. The lot is oversized for the district and neighborhood (39,914 s.f. where 30,000 s.f. is required) and the applicant proposes to reconstruct the two-family dwelling in a more centralized location on the lot in full conformance with setback and other dimensional requirements. The Board finds that the proposed reconstruction and enlargement of the existing two-family dwelling is reasonable and appropriate given the condition of the site and its relationship to surrounding properties.

As part of this finding, the Board hereby makes specific findings and **Determinations** pursuant to Section 9:4.A of the Zoning Bylaw and M.G.L. Chapter 40A, Section 6, Paragraph 1 that:

- The proposed two-family dwelling reconstruction will not change the nature of the nonconforming use, which is a two-family dwelling.
- The proposed reconstructed two-family dwelling will not be more than 50% larger than the existing two-family dwelling.
- The proposed two-family dwelling reconstruction will eliminate the existing frontyard setback nonconformity and bring it into full compliance with all setback requirements. In fact, the proposed setbacks all significantly exceed minimum requirements.
- The proposed location was chosen to be centrally located on the oversized lot within existing landscaped areas.
- The fact that the structure will be brought into setback conformity and that the new structure will be an improvement over the existing structure, which is in significant disrepair, offsets any detrimental impacts associated with the demolition of the existing structure.
- Based on these factors, the Board finds that the demolition of the existing structure and proposed reconstruction of a new two-family dwelling on the property will not be substantially more detrimental to the neighborhood than the existing structure and two-family use.

FURTHER FINDINGS

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.2.B of the Zoning Bylaws, which requires that:

- (1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:***

- (a) Does and shall comply with such criteria or standards as shall be set forth in in the section of this Bylaw which refers to the granting of the requested special permit;***

As discussed above, the proposed work complies with the special permit provisions of Section 9:4.A of the Zoning By-law.

- (b) Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;***

The Board finds that the proposed reconstruction of a two-family dwelling will not significantly increase vehicular or pedestrian traffic and that this requirement is therefore met.

- (c) Shall not have a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood;***

The Board finds that the proposed reconstruction of a two-family dwelling will not result in a significant increase in the number of residents or visitors that would adversely affect the immediate neighborhood (employees and customers do not apply to this residential site), and this requirement is therefore met.

- (d) Shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;***

The Board finds that the proposed structure meets the various dimensional requirements of the Zoning By-law including lot coverage and that this criterion is therefore met. There are no buffer zone requirements associated with this use.

- (e) Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;***

The Board finds that two-family residential uses are not known to be dangerous due to fire, explosion, emission of wastes, or other causes. As such, the Board finds that this criterion is met.

- (f) Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;***

The Board finds that two-family residential uses are not known to be typically associated with noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard which would adversely affect the immediate neighborhood. As such, the Board finds that this criterion is met.

- (g) Shall not adversely effect the character of the immediate neighborhood; and***

The Board finds that the property in question lies within an existing residential neighborhood on a main connector roadway (Washington Street) and that the proposed structure is reasonable for the neighborhood. The Board therefore finds that this criterion is met.

- (h) Shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.***

The Board finds that the proposed two-family residential structure is consistent with the historical use of the site and is appropriate for the immediate location and neighborhood within the Residence A zone, which is a residential zoning district. The Board further finds that the new structure replaces an existing two-family residential structure. As such, the Board finds that this criterion is met.

* * * * *

Consistency: This decision is consistent with purpose and intent of the Zoning By-laws.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

* * * * *

Said Special Permit is granted pursuant to Massachusetts General Laws c. 40A, s.9 which provides in pertinent part as follows:

"...special permits granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, s. 11. provides in pertinent part as follows:

"A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF c 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS

Craig W. Hiltz, Clerk

CWH/k:16-30

cc: Town Clerk Engineering Planning Board
 Board of Selectmen Building Inspector Conservation Commission

This decision was made on October 26, 2016 and filed with the Town Clerk on November 8, 2016.